

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

2003-D13

(THIS DECISION WAS VACATED)

PROVIDER –
Extencicare Health Services

Provider Nos. Various

vs.

INTERMEDIARY –
United Government Services

DATE OF DECISION-
January 28, 2003

Cost Reporting Periods Ended-
December 31, 1992
December 31, 1993
December 31, 1994

CASE NOS. 96-0618G
 96-0619G
 96-0620G

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Provider's Representative: Daniel F. Miller, Esquire, Whyte Hirschboeck Dudek, S.C.
Intermediary's Representative: Richard D. Heesen, United Government Services, LLC

The Provider Reimbursement Review Board ("Board") has reviewed the jurisdictional challenges raised by the Intermediary and the arguments against in the Provider's opposition brief. The decision set forth below involves the Board's jurisdiction over the issue of whether the Intermediary's refusal to accept the amended cost reports constituted a final determination.

Background

Extendicare Health Services, Inc. ("Extendicare"), formerly known as United Health, Inc., owns and/or operates all of the Medicare Certified Skilled Nursing Facilities that comprise the Providers in the above referenced group appeals.

Extendicare stated that for fiscal years ending (FYE) 1992, 1993 and 1994 its facilities mistakenly classified its worker compensation and unemployment insurance in the employee benefits cost center rather than in the administrative and general cost center. When the alleged error was discovered in 1995, Extendicare filed amended cost reports with the Intermediary to reclassify these expenses to the administrative and general cost center. Although the facilities that made up the group appeals had not yet received Notices of Program Reimbursement (NPRs) or final determinations from the Intermediary, the Intermediary refused to accept the amended cost reports.

Extendicare received notice from the Intermediary on August 4, 1995 that it was refusing to accept the amended cost reports for FYE 1993. On December 1, 1995, Extendicare received from the Intermediary a letter further stating that the Intermediary was also refusing to accept amended cost reports for FYEs 1992 and 1994. In response to these notices, Extendicare filed three (3) group appeals with the Board on February 5, 1996. The group appeal for FYE 1992, PRRB No. 96-0618G, included 55 Extendicare facilities. The group appeal for FYE 1993, PRRB No. 96-0619G, included 47 facilities, and the group appeal for FYE 1994, PRRB No. 96-0620G, included 147 individual facilities.

Intermediary's Position

The Intermediary alleged that Extendicare's filing of amended cost reports are in fact requests to the Intermediary to reopen the individual, as-filed facility cost reports. The Intermediary stated that Extendicare's reopening requests were denied because they did not meet the criteria as stated in HCFA Pub. 15-1 Section 2931.2.

The Intermediary further alleged that there was no adjustment made to worker compensation and unemployment insurance cost on the as-filed cost reports and, therefore, no Intermediary determination was made pursuant to Section 1878(a) of the Social Security Act, 42 C.F.R. §405.1801(a)(1) and 42 C.F.R. § 405.1841. The Intermediary stated that a provider may appeal only aspects of the intermediary's determination with which it is dissatisfied. The regulation defined an intermediary determination as a determination of the amount of total reimbursement due the provider following the close of the cost reporting period.

Lastly, the Intermediary stated that because it did not make a final determination as to the worker compensation and unemployment insurance issues, the Board may not review the issues on appeal.

Provider's Position

Extencicare alleged that it filed the amended cost reports to correct a material error found prior to the Intermediary's issuance of NPRs for the individual facilities within each group and therefore the Board has jurisdiction. The alleged error concerns the proper classification of worker compensation and unemployment insurance costs from the employee benefit cost center to the administrative and general cost center. Extencicare alleged that under 42 C.F.R. § 413.24(f), it has the right to file amended cost reports in certain circumstances. Extencicare believed that the Board has authority under the law to review the Intermediary's refusal to accept its amended cost reports filed prior to issuance of the NPRs.

Extencicare made the argument that this is not a case about reopening individual cost reports, but a case about whether the Intermediary was obliged to accept amended cost reports submitted prior to the issuance of NPRs. Extencicare concluded by stating that the Board must disregard the arguments offered by the Intermediary for rejecting the amended cost reports.

Findings of Fact, Conclusions of Law and Discussion

Pursuant to 42 U.S.C. §1395oo(a) and 42 C.F.R. §§ 405.1835 and 405.1841, a provider has the right to a hearing before the Board with respect to a cost claimed on a timely filed cost report if it is dissatisfied with the final determination of the intermediary, the amount in controversy is \$50,000 or more in a group appeal and the request for hearing is filed within 180 days of the date of the final determination.

The Board finds that the Intermediary's notice to Extencicare refusing to accept the amended cost reports did not constitute a "final determination." 42 C.F.R. § 405.1801(a)(1) defines "final determinations" as the amount of total reimbursement due the provider following the close of the

Provider's cost reporting period for items or services furnished to beneficiaries. 42 C.F.R. § 405.1803 further requires the Intermediary to furnish a provider written notice reflecting its determination of the total amount of reimbursement due the provider. The provision requires that the notice inform the provider of its statutory and regulatory rights of reconsideration and appeal.

The Intermediary responses to Extencicare did not contain such reimbursement and appeal notice requirements as contemplated by the regulations. The Intermediary's letters refusing to accept the amended cost reports appear to be explanations of its refusal position, not a reconsideration of the cost items or final determinations. Therefore, the Intermediary's refusal to accept Extencicare's amended cost reports did not constitute a final determination required for Board jurisdiction under 42 C.F.R. §1395oo(a) and 42 C.F.R. §§ 405.1835 and 405.1841. The filing of the group appeals by Extencicare were, therefore, premature.

Decision and Order

The Board finds that it lacks jurisdiction over the group appeals set forth above. The Board hereby dismisses the appeals for PRRB Case Nos. 96-0618G, 96-0619G and 96-0620G.

Review of this determination may be available under the provisions of 42 U.S.C. § 1395oo(f)(1) and 42 C.F.R. §§ 405.1875 and .1877.

Board Members Participating

Suzanne Cochran, Esquire
Henry C. Wessman, Esquire
Stanley J. Sokolove, CPA
Gary B. Blodgett, DDS

DATE OF DECISION: January 28, 2003

FOR THE BOARD

Suzanne Cochran, Esquire
Chairman

Enclosures: 42 U.S.C. § 1395oo(f)(1) and 42 C.F.R. §§ 405.1875 and .1877.

**United States Department of Health and Human Services
Provider Reimbursement Review Board**

Provider-Extencicare Health Services	*	
	*	PRRB Dec. 2003-D13
	*	
Provider Nos.-Various	*	
	*	
v.	*	
	*	
	*	FYE 12/31/92, 93, 94
Intermediary-United Government Services (Wisconsin)	*	
Blue Cross and Blue Shield Association	*	

ORDER TO VACATE

On January 28, 2003, the Provider Reimbursement Review Board (Board) issued decision number 2003-D13. The Providers have moved for reconsideration of that decision. In light of the matters raised by the Providers, the Board hereby vacates its decision denying jurisdiction

FOR THE BOARD:

Suzanne Cochran, Esq.
Chairman

Date: February 13, 2003